

REMARKS/ARGUMENTS

Section 102(b)

The Examiner has rejected claims 89 – 90 under 35 U.S.C. 102(b) as being anticipated by Bapat (U.S. Pat. No. 6,038,563), hereinafter referred to as “Bapat.” In view of the Examiner’s rejection of the claims, Applicants have cancelled claims 89 - 90, without prejudice or disclaimer, and have added claims 98 and 99 to further include the limitations and clarification to overcome the prior art. In view of these considerations, it is respectfully submitted that the rejection of the claims 89 and 90 should be considered as no longer tenable with respect to the new claims 98 and 99.

Non-Analogous Art

It is noted that the Examiner has rejected claims 91 - 97 as being unpatentable over Bapat in view of a number of different references. Those references include Shostack, (U.S. Patent No. 6,298,445) hereinafter referred to as Shostack; Reshef (U.S. Patent No. 6,321,337) hereinafter referred to as Reshef; and Rowland (U.S. Pat. No. 6,405,318) hereinafter referred to as Rowland.

Applicant believes that the Reshef reference is nonanalogous art because Reshef does not address the problem solved by the Applicant. Reshef teaches “Method and System for Protecting Operations Of Trusted Internal Networks”). Under the two-step test for determining whether a prior art reference is non-analogous and thus not relevant in determining obviousness, it must be determined (1) whether the reference is “within the field of the inventor’s endeavor,” and (2) if not, whether the reference is reasonably pertinent to the particular problem with which the inventor was involved.” In re Deminski, 796 F. 2d. 436, 230 (Fed. Cir. 1986).

The references are within the same field of the inventor's endeavor if they have essentially the same function and structure. Id. Applicant's endeavor involves protecting a database by looking for suspicious or malicious SQL statements regardless of whether they come from internal or external sources. The Reshef reference is concerned with achieving a security gateway system positioned between an external, untrusted computing environment and an internal, trusted computing environment. (Reshef, Abstract) In addition, Applicant describes a console that permits an operator to manage and monitor the security of a database system from anywhere on the network. Since the Reshef reference is not reasonably pertinent the particular problem with which the Applicant was involved; the Reshef reference is not relevant and should not be considered in determining obviousness.

Even if the Reshef reference were analogous, that alone would not permit the combination. The teaching of references can be combined only if there is some suggestion or incentive in the prior art to do so. In re Fine, 5 U.S.P.Q.2d 1596, 1599. (Fed. Cir. 1988). It is impermissible to use the claims as a framework from which to pick and choose among individual references to recreate the claimed invention. Id. at 1600. To combine references under §103, there must be something in the prior art as a whole that suggests the desirability, and thus the obviousness, of making the combination. Uniroyal v. Rudkin-Wiley, 5 U.S.P.Q.2d 1434, 1438 (Fed. Cir.), cert denied, 488 U.S. 825 (1988).

New Claims

It is respectfully submitted that new claims 98-104 clearly and patentably distinguish over the prior art, since it is believed that the construction defined in these

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claims differs essentially and in an unobvious, highly advantageous manner from the constructions disclosed in the references.

In view of these considerations, it is respectfully submitted that the rejection of the original claims should be considered as no longer tenable with respect to the new claims 89-97 and should be withdrawn. New claims 98-104 should be considered as patentably distinguishing over the art and should be allowed.

CONCLUSION

Applicants believe that the above places the application in a condition for allowance.

Respectfully submitted,

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